

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
NORTHERN DIVISION

DAWN BERRY, Administrator for the )  
Estate of Brittany A. Berry, Deceased, )  
                                              )  
Plaintiff,                                 )  
                                               )  
v.                                             )      No. 2:24 CV 25 CDP  
                                               )  
MISSOURI DEPARTMENT OF                 )  
CORRECTIONS, et al.,                     )  
                                               )  
Defendants.                                 )

**MEMORANDUM AND ORDER**

Upon careful consideration of plaintiff's motion for leave to file a Second Amended Complaint and the lack of objection thereto, and given that this case is in the early stage of litigation with no Case Management Order yet entered, I will grant the motion for leave and direct plaintiff to effect service or waiver of service upon the newly added defendants in accordance with the Federal Rules of Civil Procedure. The named defendants who have already entered on the case shall answer or otherwise respond to the Second Amended Complaint within the time required by the Rules. I will deny as moot those defendants' motion to dismiss the First Amended Complaint.

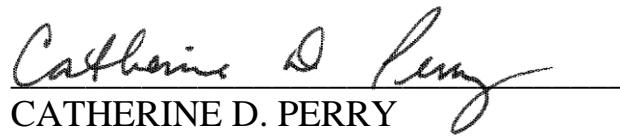
My discretionary decision to permit plaintiff to file the Second Amended Complaint shall not be construed as a conclusive finding that the Second Amended Complaint is not futile, whether in whole or in part. *See Foman v. Davis*, 371 U.S.

178, 182 (1962) (denial of leave to amend is appropriate in limited circumstances, including where amendment would be futile); *Hillesheim v. Myron's Cards & Gifts, Inc.*, 897 F.3d 953, 955 (8th Cir. 2018) (same). Rather, in the circumstances of this case, I consider it best that the claims be tested on their merits through proper motion and briefing by the parties, if appropriate, instead of upon my *sua sponte* review.

Accordingly,

**IT IS HEREBY ORDERED** that plaintiff's Motion for Leave to File Second Amended Complaint [31] is **GRANTED**. Plaintiff shall effect service of process or waiver of service upon the newly added defendants in accordance with the Federal Rules of Civil Procedure. Defendants Angela Messmer and Allen Thomas shall answer or otherwise respond to the Second Amended Complaint within the time required by the Federal Rules of Civil Procedure.

**IT IS FURTHER ORDERED** that defendants Angela Messmer and Allen Thomas's Motion to Dismiss Plaintiff's First Amended Complaint [28] is **DENIED as moot.**



CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE

Dated this 27th day of December, 2024.